

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MICHAEL A. VONSLOCHTEREN,

Plaintiff,

v.

CECILIE BAIN LEE; WILLIAM SCOTT
LEE, et al.,

Defendants.

Case No. 3:12-cv-00663-MMD-VPC

ORDER

I. SUMMARY

Before the Court is Defendants Gildardo Garcia ("Garcia") and AV Carriers, Inc.'s (collectively, "Defendants") Motion for Partial Summary Judgment on the Issue of Liability. (Dkt. no. 32.) For the reasons discussed below, the Motion is denied.

II. BACKGROUND

This case stems from a motor vehicle accident that occurred on Interstate Highway 80 during a heavy snowfall on the night of December 28, 2010. (Dkt. no. 32 at 3.) Plaintiff was driving a Ford F-350 pickup and towing a trailer at approximately 60 miles per hour. (Dkt. no. 1 ¶ 20; dkt. no. 32 at 3.) Garcia was driving a semi-tractor trailer and, due to the snowstorm, he was traveling at about 45 miles per hour. (Dkt. no. 32 at 4; dkt. no. 1 ¶ 14.) The accident occurred as Plaintiff, who was driving behind Garcia, moved his vehicle into the left lane to pass Garcia. (Dkt. no. 32 at 5.) Another vehicle driven by Defendant Cecilie Bain Lee ("Lee") had hit a patch of black ice, spun out of control, and ended up resting in the left lane. (*Id.* at 4.) Upon seeing Lee's vehicle,

1 Plaintiff tried to avoid it by accelerating and moving to the right lane. Plaintiff's vehicle
2 "struck the front fender" of Lee's vehicle and was "knocked sideways to the right." (*Id.* at
3 3 n.2.) Plaintiff's "trailer then scraped the semi truck from the fuel tank and bumped the
4 front end of the semi truck." (*Id.*) The accident was captured on Plaintiff's vehicle's video.
5 (Dkt. no. 33.) Both parties rely in part on the video to support their arguments.

6 Plaintiff asserts claims for negligence and negligence per se against Defendants
7 and for liability under a respondeat superior theory against AV Carriers, Inc. (Dkt. no. 1
8 ¶¶ 25-51.) Defendants seek summary judgment on the issue of Garcia's liability.

9 **III. LEGAL STANDARD**

10 "The purpose of summary judgment is to avoid unnecessary trials when there is
11 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,
12 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
13 pleadings, the discovery and disclosure materials on file, and any affidavits "show[] that
14 there is no genuine dispute as to any material fact and the movant is entitled to judgment
15 as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 330
16 (1986). An issue is "genuine" if there is a sufficient evidentiary basis on which a
17 reasonable fact-finder could find for the nonmoving party and a dispute is "material" if it
18 could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby,*
19 *Inc.*, 477 U.S. 242, 248-49 (1986). Where reasonable minds could differ on the material
20 facts at issue, however, summary judgment is not appropriate. *Id.* at 250-51. "The
21 amount of evidence necessary to raise a genuine issue of material fact is enough 'to
22 require a jury or judge to resolve the parties' differing versions of the truth at trial.'" *Aydin*
23 *Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (*quoting First Nat'l Bank v. Cities*
24 *Service Co.*, 391 U.S. 253, 288-89 (1968)). In evaluating a summary judgment motion, a
25 court views all facts and draws all inferences in the light most favorable to the
26 nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103
27 (9th Cir. 1986).

28 ///

1 The moving party bears the burden of showing that there are no genuine issues
2 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In
3 order to carry its burden of production, the moving party must either produce evidence
4 negating an essential element of the nonmoving party’s claim or defense or show that
5 the nonmoving party does not have enough evidence of an essential element to carry its
6 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
7 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s requirements,
8 the burden shifts to the party resisting the motion to “set forth specific facts showing that
9 there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may
10 not rely on denials in the pleadings but must produce specific evidence, through
11 affidavits or admissible discovery material, to show that the dispute exists,” *Bhan v. NME*
12 *Hosp., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show
13 that there is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am.*, 285
14 F.3d 764, 783 (9th Cir. 2002) (*quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
15 475 U.S. 574, 586 (1986) (internal quotation marks omitted). “The mere existence of a
16 scintilla of evidence in support of the plaintiff’s position will be insufficient.” *Anderson*,
17 477 U.S. at 252.

18 **IV. DISCUSSION**

19 Defendants argue that the undisputed facts show that Garcia exercised
20 reasonable care under the circumstances and was not negligent. But “[w]hether a
21 defendant’s conduct was ‘reasonable’ under a given set of facts is generally an issue for
22 the jury to decide.” *Lee v. GNLV Corp.*, 22 P.3d 209, 212 (Nev. 2001). Moreover, the
23 parties dispute the facts that Defendants rely upon to demonstrate the reasonableness
24 of Garcia’s conduct.

25 The Complaint alleges that Garcia “had a duty to decrease speed and [to] allow
26 Plaintiff to safely pass and avoid the collision.” (Dkt. no. 1 ¶ 30.) Defendants argue that
27 Plaintiff undisputedly tried to pass Garcia, but Plaintiff had a duty to wait until he was at a
28 “safe distance” before returning to the right lane. (Dkt. no. 32 at 8.) According to


1 Defendants, Garcia was not negligent because Plaintiff was the “disfavored driver” who
2 invaded Garcia’s right of way, while Garcia had the right of way and, accordingly, was
3 the “favored driver.” (*Id.*) Plaintiff counters that Garcia’s vehicle did not remain
4 completely in the right lane — it “hugged the center line and strayed into the left hand
5 lane.” (Dkt. no. 34 at 5.) Plaintiff also disputes whether Garcia slowed down when he
6 was trying to pass. (*Id.*) Each party relies on the video of the accident to support its
7 version of the facts.

8 The Court finds that disputed issues of material facts preclude summary
9 judgment. Defendants’ arguments rely on the contention that Garcia was driving in his
10 lane and slowed down as Plaintiff was passing him. Plaintiff, however, disputes this
11 claim and argues that Garcia’s vehicle drifted into the left-hand lane and, while he was
12 passing, “may have strayed over into” his lane. (*Id.*) Plaintiff also disputes the claim that
13 Garcia reduced his speed. (*Id.*) The video of the accident does not clearly support the
14 parties’ respective arguments. It is not clear from the video whether Garcia was driving in
15 his lane because the dividing line is not visible through the snow. Nor is it clear that
16 Garcia reduced his speed as Plaintiff tried to pass him. Because the Court is required to
17 draw all inferences in the light most favorable to the nonmoving party, *Kaiser Cement*,
18 793 F.2d at 1103, the Court must conclude that the video supports Plaintiff’s
19 contentions. At a minimum, the video is neutral, which leaves the Court with conflicting
20 versions of facts material to the issue of liability. Accordingly, summary judgment is not
21 appropriate.

22 **V. CONCLUSION**

23 It is therefore ordered that Defendants’ Motion for Partial Summary Judgment on
24 the Issue of Liability (dkt. no. 32) is denied.

25 DATED THIS 14th day of August 2014.

26
27
28 
MIRANDA M. DU
UNITED STATES DISTRICT JUDGE